90-604

IN THE SUPREME COURT OF THE UNITED STATES

ERNEST R. ZERMAN and EVELYN ZERMAN,

Petitioners,

v.

SUPREME COURT OF FLORIDA, ROBERT L. ANDREWS, GEORGE HERSEY, SID WHITE, SIDNEY WOLOFSKY, MEL SCHUSTER, KENNETH WOLOFSKY, PETER WOLOFSKY, ELROD CORP. and JACK AXELROD,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED

I. Whether States Higest Court, as it held in Fleeman v. Case, 342 So.2d 815(Fla. 1976), is COMPELLED to hold invalid, statutes, namely FSA 711.231, 718. 401(8)(a) and now FSA 718.4015,(which statutes prohibited the enforcement of escalationclauses in recreational leases) as laws impaired the obligation of private contracts and such laws are invalid under Article I, section 10 of both the United States and Florida Constitution; when applicable decisions of this Court, which is supreme on federal constitutional issues, hold that even though the language of the Contract Clause is facially absolute, its prohibition must be accommodated to inherent sovereign Police Power of State to safeguard the vital interests of its people, especially when a condominium is a creature of the State and Condominium Law Chapter was in force(FSA 711) at the time the private contract was executed. See Energy Reserve Group, Inc. v. Kansas Power & Light, 103 S.Ct.697 (1983)

II. Whether 1st and 14th Amendments of United States Constitution and Art. I, Section 21, 22 of Florida Constitution are violated when Discretionary appeals to Supreme Court of Florida under ArticleV 3(b)(3) are CUT-OFF by Clerk following Manual II A.1.(a) promulgated under case, Jenkins v. State , 385 So.2d 1356 (Fla.1980) mandating AUTOMATIC Dismissal by Clerk, without hearing, solely based on the fact that Court of Appeal of the First instance rendered a Per Curiam Affirmed decision WITHOUT AN OPINION. See, Griffin v. Illinois, 351 US 12,18.

TABLE OF CONTENTS

	Page
Question Presented . . .	i
Table of Authorities . .	ii
Opinions Below	2
Jurisdiction	3
Constitutional and Statutory Provisions Involved .	3
Statement of the Case . .	3
Reasons For Granting The Writ .	14
Argument	
I. Although the language of the Contract Clause is facially absolute, its prohibition must be accommodated to the inherent police power of the State "to safeguard the vital interests of its people" , therefore Fleeman is in denigration of Florida's sovereign Police Power	19
II. When an appeal is afforded, here a discretionary one under Fla.Const.Art.V,3(b)(3) it cannot be granted to some litigants and capriciously, arbitrarily and AUTOMATICALLY denied to others without violating the Equal Protection Clause ...	21

AUTHORITIES

Allied Structural Steel v.Spannaus 438 US 242	20
Ass'n of Golden Glades v. Security Management, 15 F.L.W. 99 .	15
Dept. Legal Affairs v. 5th DCA, 434 So.2d 310	22
Chicago B & Q RR v. Chicago, 166 US 45 . . .	10

Page

Conley v. Gibson, 355 US 45 . . 8

ENERGY RESERVE GROUP v. KANSAS P & L 103 S.Ct. 697(1983) .i, 14

Griffin v. Illinois, 351 US 12 . . 22

HOME BLDG &LOAN ASS'N v. BLAISDELL, 290 US 398(1934) . 19

Hostetter v. Idlewild Liquor, 377 US 332 "

Hudson v. Louisiana, 450 US 40 . . 20

LINDSEY v. NORMET, 405 US 56(1972) . 22

* Fleeman v. Case, 342 So.2d.815 (Fla.1977) . passim

* Jenkins v. State, 385 So.2d 1356 (Fla.1980) passim

Moore v. Dempsey, 261 US 86(1923) . 4

Merrion v. Jicarilla Tribe, 455 US 130 21

Rinaldi v. Yeager, 384 US 310 (1966) . 14

U.S.Trust Co v. New Jersey, 431 US 1 . 19

VEIX v. SIXTH WARD B & L, 310 US 32 . 20

Yamaha Dist. Inc. v. Ehrman, 316 So.2d 557(Fla.1975) . . 5

Hudson Water Co. v. McCarter, 209 US 349 .21

CONSTITUTIONAL AMENDMENTS etc

Lst, 7th, 10th & 14th Amendments passim

Florida Supreme Court Manual For Handling Cases IIA.1a. passim

42 USC 1983 . . . passim

Florida Stat. FSA 711.231, 718.401 and FSA 718.4015 . . passim

28 USC 2201 1

Fla.Const. Art.I, sections 21,22 10

Fla. Supreme Court Rule 2.030 13

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT.

Ernest R. Zerman and Evelyn Zerman, pro se, petition herein for a Writ of Certiorari to review the 5-23-90 decision of U.S. Court of Appeals for the Eleventh Circuit affirming with-out opinion Order of District Court Southern District of Florida Dismissing Complaint, sua sponte. The affirmance is App.A.

District Court's 6-21-89 Order of Dismissal after 5 days consideration and before answering pleadings, App.B hereof, with-out opinion is: "The court has reviewed the plaintiffs' complaint and has failed to discern a cognizable federal cause of action."

Complaint invoked jurisdiction under 28 USC 1331,1332 and 2201 ...arising under 14th Amend. and 42 USC 1983.

Aring also under 1st, right to attorney and access to Florida Supreme Court, and 14th which implicitly includes Fla.Const.Art.I,s. 22 Jury and 18 USC 1961. Also 2201 invoked for Fla. Supreme Court's invidious, unequal

handling of appeals per Jenkins v. State, as Supreme Ct. Manual II A on Discretionary Appeals, is patent deprival of rights under 1st and 14th A. Complaint prayer for relief: "Court ...under authority of 28 USC 2201 declare: Florida Supreme Court Manual IIA. and case of Jenkins v. State, 385 So.2d 1356 (Fla. 1980) under which manual was promulgated, as Unconstitutional in violation of 14th Amend. and case of Fleeman v. ~~State~~ CASE, 342 So.2d.815 (Fla.1977) be declared unconstitutional as in violation of the 10th Amendment of U.S.

OPINIONS BELOW

NO OPINION with Affirmance of 11th Circuit Court of Appeals filed 5-23-90, Appendix-A.

NO OPINIONwith Dismissal of complaint by District Court S.D.Fla.,filed 6-21-89,App.B.

NO OPINION with 3-10-89 AUTOMATIC Dismissal of Discretionary Appeal by Clerk of Supreme Court of Florida, Appendix C.

NO OPINION with 4th District Court of Appeal Affirmance filed 11-18-87, App. D.

NO OPINION with Florida 17th Circuit Foreclosure Judgment filed 8-19-86, Appendix E.

JURISDICTION

The No opinion affirmance was filed by United States Court of Appeals for Eleventh Circuit on May 23, 1990. This Court extended time for filing petition to 10-8-1990. The jurisdiction of this Court is invoked under 28 USC 1254(1).

CONSTITUTIONAL PROVISIONS-STATUTES INVOLVED

Set forth in body and notes of petition are: The 1st, implicitly the 7th, 10th and 14th Amendments to the U.S. Constitution.-Article V, Section 3(b)(3), Art. V, Section 2 under which was adopted Rule 2.030 of Supreme Court, and Supreme Court Manual of operating procedures II A.1.(a); Art.I,s 22 of Florida Const. U.S.Statute, Title 28 Section 2201 and Title 42 Section 1983 and 18 Section 1961. Florida Statutes: FSA 711.231 (1975), FSA 718.401(8)(1985) and FSA 718.4015 (1988).

STATEMENT OF THE CASE

Introduction

We "plead" for a fair hearing by each Justice which was not had in Courts below by their unfair cursory "WITHOUT OPINION" deci-

sions. Moore v. Dempsey, 261 US 86 (1923):

"Fundamental too, in the concept of due process and so in that of liberty, is the thought that condemnation should be rendered only after trial. The hearing, moreover, must be a real one, not a sham or a pretense."

The nexus of petitioners' 42 USC 1983 claim is the unconstitutionality of Supreme Court of Florida cases Fleeman v. Case and Jenkins v. State with resultant deprivation of Zermans' fundamental civil and constitutional rights secured by the 1st, implicitly the 7th, 10th and 14th Amendments, all of which directly resulted in Zermans' damage.

Is it not a denial of a fair hearing and denial of 10th Amendment rights, and a sham and a pretense of Justice under Law, when, as held by Fleeman Court (3 times): "We would be compelled to hold it-' FSA 711.231 (1975, FSA 718.401(8)(a) (1985) and FSA 718.4015(1988)-, under both the United States and Florida Constitutions.

Is it not a denial of a fair hearing and denial of 14th Amendment rights, and a sham and a pretense of Equal Justice Under Law,

when, as mandated by Jenkins' Court and under Supreme Court Manual II A.1.(a), clerk of the Supreme Court AUTOMATICALLY Dismisses Discretionary Appeal only because lower Court did not write an Opinion.

Is it not a denial of a fair hearing and Justice Under Law, when in the supporting case for Fleeman, Yamaha Dist. Inc. v. Ehrman, 316 So.2d 557 (1975), and a deprivation of 10th Amendment rights, Supreme Court of Florida held: "Virtually no degree of contract impairment is TOLERATED in this State."

Both Fleeman (since 1827) and Jenkins are in conflict with applicable decisions of this Court and this Court must take judicial notice of the great public importance of settling the conflicts

Federal Court Actions

Petitioners, pro se, seek review of 11th Circuit Court's 5/23/90 With-out Opinion Affirmance, Appendix A hereof, of the Order of U.S. District Court for Southern District of Florida dated 6/21/89, dismissing, without

opinion after only 5 days consideration and before any answering pleading of defendants, petitioners complaint, App. B hereof.

U.S. District Court complaint para. No.1: "1. Jurisdiction invoked under 28 USC 1331, 1332 & 2201...controversy arising under 14th Amend. & 42 USC 1983.

2. Also under: 1st, right to attorney and acess to Florida Supreme Court and 14th A., which implicitly includes Fla.Const.Art.I, sections 2,9,12,21, 22 Jury;also 18 USC 1961.
3. 28 USC 2201 invoked, with 11th A. as no bar, Papasan v. Allain,for Fla. Supreme Ct. ONGOING invidious, irrational, unequal handling of appeals per Jenkins v. State, as Supreme Court Manual II A.Discretionary Review, is a patent deprival of rights under 1st, 14th A., and s.1983 with damage by White's AUTOMATIC Dismissal of Zermans' Appeal of $22,298 Foreclosure Jt.,$2,229 rents, & $15,000.00 attorney fee ONLY because DCA Affirm was WITHOUT OPINION. Manual below:

II. Internal Procedures for Handling of Cases.

A. Discretionary Review.

1. Discretionary Review of District Court of Appeal Decisions (Except those Certified by District Courts of Appeal).

(a) When a notice of seeking discretionary review is filed, ~~the clerk's office will determine whether a district court of appeal has written an opinion in the case. If there is no opinion, the case is automatically dismissed. If the district court has written an opinion,~~ the clerk's office dockets the case and assigns it to a panel of five Justices according to a rotation formula. When all jurisdictional, briefs have been filed, copies go to the offices of each justice on the panel to vote on whether review should be granted, and, if so, whether oral argument should be heard. (The Chief Justice is assigned one-third

Complaint No.29:
"29. Zermans seek redress for unconstitutional deprivation under color of unconstitutional Fleeman v. Case, 342 So.2d 815 which unconstitutionally validated Avant Garde ESCALATED 99 year Rec Lease rents amounting to $2229.98, the claimed obligation upon which the void 8/19/86 Foreclosure Judgment, Appendix E hereof, is based, wherein State Actor Andrews, in State Action No.81-21402 Ordered Foreclosure Judgment in favor of "under color of-Wolofskys, based on escalated rents of $2229."(void under 711.231, 718.401(8)(a) and 718.4015, enacted under 10A.

Complaint prayer for Relief:
"2. Court under authority of 28 USC 2201 declare Florida Supreme Court Manual II A. and Jenkins v. State unconstitutional as in violation of 14th and 1st Amendments and Fleeman v. Case declared unconstitutional as in violation of 10th Amendment.

On June 21, 1989, District Court, sua sponte, after only 5 days consideration before receipt of answering pleadings, Without an opinion, Dismissed Zermans' complaint, App. B hereof, as follows: "The court has reviewed the plaintiffs' complaint and has failed to discern a cognizable federal cause of action."(a patent violation of 5thA.

Treating the allegations of Zermans' pro se complaint and this petition "liberally, as we must" Cf. Haines v. Kerner, 404 US 519, together with a "patient scrutiny and liberal

reading in plaintiffs favor", Cf. Conley v. Gibson, 355 US 45, it is evident that District Court abused its discretion and departed from the essential requirements of the law, specifically law of 42 USC 1983[1].

note 1. 42 USC 1983 provides: "Every person who, under color of any statute, regulation ...of any state,...subjects any citizen... to the deprivation of any right, privilege or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law."

Appeal to U.S. Circuit Court of Appeal for the Eleventh Circuit was filed 7-10-89, appealing District's Final Order of 7-3-89, denying Zermans' Motion under Rule 59(e).

Jurisdiction of appeal to 11th Circuit was based on 28 USC 1291, 1254,1257 and 2201, and claim for appellate relief based on Florida's constitutional torts under Fleeman and Jenkins, depriving petitioners of rights secured under U.S. Constitution and laws.

On 5-23-90, 11th Circuit Court in a Without Opinion Do Not Publish decision, App.A, affirmed District Court's dismissal and denied "Sugestion of Hearing in Banc." On 7-26-90, time to file petition extended to 10-8-90.

State Actions-State Actors Including Under Color Of Private Actors-Stage Fed.Q.Raised.

The crux of this petition is the great public importance to all Florida citizens, including the Zermans, of the deprivation of their fundamental civil and constitutional rights, under color of unconstitutional Fleeman v. Case and unconstitutional Jenkins v. State. These deprivations are ONGOING, see 1990 invalidation of FSA 718.4015, and were suffered by Zermans when Florida 17th Circuit Court Judge Andrews on 8/19/86 Ordered Foreclosure of Zermans Condominium home, App.E.

The 8-19-86 Foreclosure was based on Statutory Lien claim under Fla.Stat.718.,on claimed obligation of $2229 ESCALATED Rec Lease rents which were invalidated and unenforceable by Florida's legislature under its Police Power under U.S. 10th A., when it enacted Fla.Stat.FSA 711.231[2], FSA 718.401(8)(a) and now FSA 718.4015.

2.-FSA 711.231 Escalationclauses in leases for recreational facilities...for condominiums prohibited.—It is declared that public policy of this state prohibits the enforcement of escalation clauses in leases for recreational facilities and such clauses are hereby declared void for public policy.

Review should be had as Florida State Court, 17th Circuit, in a statutory lien foreclosure case on a Lien Claim under FSA 718, cancelled the scheduled jury trial, when under Federal law of 14th A. and also since 7th A. is implicit under Art.I, section 22 of Fla.Const., all shows Judge Andrews decision is in conflict with applicable decisions of this Court, see below:

"It is possible that some of the personal rights safeguarded by the first eight amendments against national action may also be safeguarded against state action, because a denial of them would be a denial of due process of law. Chicago B&Q R.R. v. Chicago, 166 US 226. If this is so, it is not because those rights are enumerated ...but because they are such nature that they are included in the conception of due process of law ....it is clear that the right to the aid of counsel is of this fundamental character." Cf. Powell v. State of Alabama, 53 S.Ct.63.

Judge Andrews also denied Zermans request for an attorney to aid them in Foreclosure.

Judge Andrews void Foreclosure Judgment in violation of 14th A. makes him liable to Zermans under 42 USC 1983 as he acted in a clear absence of all subject matter jurisdiction.

Private Actors Wolofskys are liable to Zermans under 42 USC 1983 for Wolofskys'

joint participation in depriving Zermans of rights secured by constitution and laws of US.

STAGE at which Zermans raised federal issues was in court of first instance, as follows. That on 9-15-86 in their Notice of Appeal to 4th District Court of Appeal, appealing from Florida 17th Circuit Court's 8-19-86 void foreclosure judgment, rendered by Judge Andrews without demanded and scheduled JURY TRIAL and rendered without requested ATTORNEY, is where Zermans raised federal questions of unconstitutionality of Fleeman v. Case.

Raising of issue is 2nd para. of appeal: "Notice of Appeal includes issue of Constitutionality of Fleeman v. Case since $2,229.98 included escalated Avant Garde Rec Lease Rents under CPI under A.G. 99 yr.rent Agreem."

The Florida Fourth District Court of Appeal, herein 4th DCA, denied Zermans appeal on 11-18-87, appendix D herein, WITHOUT OPINION. This 4th DCA Affirmance WITHOUT OPINION, Affirmed Judge Andrews 8/19/86 void Foreclosure involving the federal issue of Fleeman's unconstitutionality under "compelled to hold

it (FSA 711.231, FSA 718.401(8), FSA 718.4015) invalid as impairing the obligation of contract under Art. I, sect. 10 of BOTH the United States and Florida Constitutions.

Also, since the 4th DCA Affirmance Without Opinion was a de facto denial of Fla. Supreme Court review of Zermans' discretionary appeal, per mandate of unconstitutional Jenkins and Manual IIA requiring AUTOMATIC Dismissal of this 4th DCA Affirmance Without Opinion, therefore this 4th DCA Affirmance without Opinion was a denial of a federal issue because the Jurisdiction of the Fla. Supreme Ct. as set forth in Constitution is ART. V, 3(b)(3): "May review any decision of a district court of appeal...that expressly construes a provision of the state OR FEDERAL CONSTITUTION.

Stage- Zermans Brief in 4th DCA appeal:

"POINT VI-Where Foreclosure is based on Alleged Obligation Of Escalated Condo Recreational Rents...Is Fleeman Holding In Violation of 10th and 14th Amend. Since All Contracts Must Be Accommodated To States Inherent Police Power and All Contractual Arrangements Remain Subject To Subsequent Legislation By The State.

Supreme Court of Florida by its Clerk White acting on his own and under color of unconstitutional Supreme Court Manual II A.1.(a) and under unconstitutional Jenkins , on 3-10-88, see App. C hereof, Dismissed Zermans appeal AUTOMATICALLY because Per Curiam Affirmed decision of 4th DCA was WITHOUT OPINION resulting in over $22,298 damages to Zermans.

2-27-88 Notice of Appeal Dismissed by Clerk White on March 10,1988, AUTOMATICALLY, is: "NOTICE IS GIVEN that defendants-appellants invoke the discretionary jurisdiction[3] of Supreme Court to review decisions of Court of11/18/87 and 1/28/88 as decisions are within Supreme Court Jurisdiction since foreclosure ...implicitly unconstitutional warrants review under 1st,7th and 14th Amend. and Art.I,sections 21 & 22.

3. (3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

Rule 2.030. THE SUPREME COURT

(1) *Exercise of Powers and Jurisdiction.*

The supreme court shall exercise its powers and jurisdiction en banc. Five justices shall constitute a quorum and the concurrence of four shall be necessary to a decision. In cases requiring only a panel

REASONS FOR GRANTING THE WRIT

It is of great public importance to 1000s of Florida citizens that the issues raised be answered, firstly because the unconstitutionality of Florida Supreme Court decision in Fleeman v. Case, judicially recognized as of great public importance, see decisions below, and secondly, because of the unconstitutional decision of Jenkins v. State which this Court must recognize of great public importance as 1/3 of All Florida District Court of Appeal decisions are WITH-OUT Opinions, since Fleeman and Jenkins are in conflict with applicable decisions of this Court on 10th Police Power Amendment and 14th Equal protection of Laws and Due Process of Law Amendment, see Energy Reserves Group v. Kansas P & L., 103 S.Ct.697(1983) and Rinaldi v. Yeager, 384 US at 310 (1966).

Review is warranted under strict scrutiny analysis and rationale as supremecy of this Court's decisions on 10th and 14th Amendment issues is impugned by Fleeman decision:

"We would be COMPELLED to hold it (FSA711.231, 718.401(8) and now 718.4015) invalid as impairing the obligation of contract under Article 1, Section 10 of both the United States and Florida Constitutions.."

Below are excerpts from Florida Decisions showing the great public importance of issue.[4]

4.

SUPREME COURT OF FLORIDA 15 FLW S99

ASSOCIATION OF GOLDEN GLADES CONDOMINIUM CLUB, INC., Petitioner, vs. SECURITY MANAGEMENT CORP., Respondent. Supreme Court of Florida. Case No. 71,909. March 1, 1990. Application for Review of the Decision of the District Court of Appeal—Certified Great Public Importance. Third District—Case No. 87-539 (Dade County). Nancy Schleifer, Mi-

OVERTON, J. We have for review *Association of Golden Glades Condominium Club, Inc, v. Security Management Corp.*, 518 So. 2d 967 (Fla. 3d DCA 1988), in which the Third District Court of Appeal certified the following question as one of great public importance.

15 FLW S101

(Emphasis added.) In 1989, the legislature amended section 718.4015 by chapter 89-164, Laws of Florida, to clarify its 1988 amendment. It provides, in relevant part:

(1) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums, and such clauses are hereby declared void for public

Ch. 89-164, Laws of Fla. 15 FLW S101

We have established case law concerning the enforceability of escalation clauses in recreation leases entered into prior to June 4, 1975. In 1976, this Court addressed the enforceability of section 711.231 to leases entered into prior to its effective date, June 4, 1974, in *Fleeman v. Case*, 342 So. 2d 815 (Fla. 1976). There, we held that the statute could not be given retroactive application because there was no showing that such was the intent of the legislature. *Id.* at 818. Further, we stated: "Even were we to conclude that the Legislature intended retroactive application of this statute, we would be compelled to hold it invalid as impairing the obligation of contract under Article I, Section 10 of both the United States and Florida Constitutions." *Id.* (citation omitted).

Case on Public Importance of 10th A. issue.5

5. SUPREME COURT OF FLORIDA 15 FLW S117

(OVERTON, J.) We have for review *Condominium Association of Plaza Towers North v. Plaza Recreation Development Corp.*, 514 So. 2d 381 (Fla. 3d DCA 1987), in which the Third District Court of Appeal held that an escalation clause in a recreation lease entered into prior to the effective date of section 711.231, Florida Statutes (1975),* was still enforceable. We have jurisdiction. Art. V, § 3(b)(3), Fla. Const. We approve the Third District Court of Appeal's decision.

The Third District Court of Appeal relied on its decision in the instant case in rendering its opinion in *Association of Golden Glades Condominium Club, Inc. v. Security Management Corp.*, 518 So. 2d 967 (Fla. 3d DCA 1988), in which it certified the identical issue to this Court as one of great public importance. For the reasons we expressed in *Association of Golden Glades Condominium Club, Inc. v. Security Management Corp.*, No. 71,909 (Fla. Mar. 1, 1990) [15 F.L.W. S99], which is being released simultaneously with this opinion, we hold that the escalation clause in the instant case is valid and enforceable.

Conflict between U.S.11th Circuit's 5/23/90 Affirmance of Fleeman's 10th Amend. violation and applicable decisions of this Court is established, since conflict was put in issue by Wolofskys' 3-15-90 Supplemental Authority: "Notice to the Court...of following supplemental authority with reference to the enforceability of rent escalation clauses in condominium recreation leases and the continued viability of Fleeman v. Case,/ 342 So.2d 815.

1. Association of Golden Glades Condominium Club, Inc. v. Security Management Corp. 15 F.L.W.S99 (Fla.3-1-90)
2. Condominium Association of Plaza Towers North, Inc., v. Plaza Recreation Development Corp., 15 F.L.W. S117 (Fla.3-1-90)

Miami Herald 5-13-88 Front page & p.19A[6]. . .

article concerning importance and conflict.

note 6.

MIAMI HERALD FRONT PAGE
5-13-88 page 1

By STEVE BOUSQUET
Herald Capital Bureau

TALLAHASSEE — In a move to provide relief to as many as 120,000 Floridians, the Senate on Thursday passed a bill freezing existing charges on condominium recreational leases signed before June 4, 1975.

~~The bill, which passed the House~~

MIAMI HERALD 5-13-88

LEASES / *from 1A*

One expert on condominium law predicted that the legislation will bring lawsuits.

"I expect there will be litigation immediately involving the constitutionality of this legislation," said Fort Lauderdale attorney Gary Poliakoff, who specializes in condominium law and teaches the subject at Nova University Law School.

The Legislature abolished escalation clauses in recreation leases in 1975 but did not make the action retroactive.

The state and U.S. constitutions

p.19A

specifically prohibit the voiding of existing contracts, but court decisions have said contracts are not absolute and must be balanced against public health and welfare.

He said 10 to 15 percent of the condominium unit owners in Florida, about 120,000 people, are still bound by the escalating lease clauses.

Many of those owners feel victimized by the leases, said Scott Busch, supervisor of the Hollywood office of the Florida Bureau of Condominiums. Statistics compiled by the bureau show there are 3,422 condominium associations in

20A MIAMI HERALD 5-27-88

~~document [illegible] said [illegible]~~. "~~[illegible] glaring error.~~"

Both the Senate and House passed the original bill two weeks ago by overwhelming margins.

Responding to an organized chorus of complaints from condo residents, particularly in Dade, Broward and Palm Beach counties, legislators voted to freeze built-in rent increases in leases for recreation areas such as golf courses and clubhouses if they were signed before June 4, 1975.

A court battle is expected over the freeze on rent increases.

The state and U.S. constitutions specifically prohibit voiding of existing contracts, but court decisions have said those clauses are not absolute and must be balanced against public health and welfare.

This Court as final arbitrator and establishing the Supremecy of this Court on Federal law review is appropriate as born out by Fla.11th Cir.Ct, Dorten v. Maison Grande Condo:

"Cogent arguments were presented by the defendant ass'n that Fleeman case is no longer consistent with contemporary precedent. However the language in Fleeman is strong and definite, and this court is not permitted to decide differently than the Florida Supreme Court. This Court certifies this issue to be one of great public importance and to which it recommends review by the high Court.

This Court should take judicial notice of importance of settling conflict, see below.[6]

Re: Jenkins v. State

Review is warranted as Supremecy of this Court is impugned by Fla.Const.Art.V 3(b)(3), Jenkins and Manual II A.1.(a), which grants power, unconstitutionally, to the 4th District Court of Appeal by not writing an opinion, to have the Clerk of the Supreme Court to AUTOMATICALLY Dismiss citizen Zermans discretionary appeal to the Florida Supreme Court: Art.V 3(b)(3): "May review any decision of DCA...that expressly construes a provision of the FEDERAL CONSTITUTION. Sure-AUTOMATIC DISMISSAL violates 1st and 14th A.

ARGUMENT

I. AN IMPORTANT PUBLIC QUESTION WHICH SHOULD BE SETTLED IS WHETHER THE FLEEMAN DECISION WHICH COMPELLED INVALIDATING FLORIDA STATUTES FSA 711.231, 718.401(8) and 718.4015, AS IN VIOLATION OF ART.I,SECT.10 OF BOTH U.S. AND FLORIDA CONSTITUTIONS, IS REPUGNANT TO STATE'S POLICE POWER FOR, EVEN THOUGH LANGUAGE OF CONTRACT CLAUSE IS FACIALLY ABSOLUTE, ITS PROHIBITION MUST BE ACCOMMODATED TO INHERENT POLICE POWER OF STATE TO SAFEGUARD THE VITAL INTEREST OF ITS PEOPLE.

Strict scrutiny analysis and rationale are applicable here, and petitioners cite analogous case Hostetter v. Idlewild Liquor, 377 US at 332:

"The Court added a significant, if elementary observation: 'Both the 21st Amendment and the Commerce Clause are parts of the same Constitution, each must be considered in the light of the other, and in the context of the issues and interests at stake in any concrete case'".

Although the language of the Contract Clause is facially absolute, its prohibition must be accommodated to the inherent police power of the State "to safeguard the vital interests of its people." Home B & L Ass'n v. Blaisdell, 290 US 398,434.(1934).

In United States Trust Co. v. New Jersey, 431 US 31, 97 S.Ct. at 1522 (1977):

"On the other hand, state regulation that restricts a party to gains it reasonably expected from the coontract does not necessarily constitute a substantial impairment... citing El Paso v. Simmons, 379 US 497,515.

In determining the extent of the impairment, we are to consider whether the industry the complaining party has entered has been regulated in the past. Allied Structural Steel v. Spannaus Co./ 438 US at 242,n13, citing Veix v. Sixth Ward B & L Ass'n, 310 US 32,38, which also / holds:

"a statutory amendment is not an unconstitutional impairment of pre-existing contract rights IF THE ORIGINAL STATUTE WAS IN FORCE AT THE TIME THE CONTRACT WAS EXECUTED."

Florida Statute, Chapter 711, FSA711.02:(2)

To establish procedures for the creation, sale, and operation of condominiums.

In Florida, condominiums are creatures of statute and as such are subject to the control and regulationof the Legislature. Cf. Century Village v. Wellington,361 So.2d 128.

United States Trust Co, supra, 431 US 23:

"as is customary in reviewing economic and social regulation,...courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure."

Hudson v. Louisiana, 450 US 40,42:"Conflict "between a decision of the highest state court and that of this Court on a matter of federal law is a strong reason for granting certiorari."

Avant Garde Condominium, as are all condos after enactment of original Condominium Act Chapter 711, as evident by its Declaration:

"1.G. Condominium Act means and refers to the Condominium Act of the State of Florida (F.S.711 et.Seq.) AS THE SAME MAY BE AMENDED FROM TIME TO TIME."

Hudson Water Co. v. McCarter, 209 US 357:

"One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the state by making a contract about them." Wolofskys contract runs to year 2073..

Merrion v. Jicarilla Tribe, 455 US 130,147:

"Contractural arrangements remain subject to subsequent legislation of presiding sovereign."

II. WHETHER AN IMPORTANT PUBLIC QUESTION WHICH ALSO REQUIRES EXERCISE OF THIS COURT'S POWER OF SUPERVISION IS INVOLVED, WHEN 1st AND 14th AMENDMENTS ARE VIOLATED WHEN DISCRETIONARY APPEALS TO SUPREME COURT OF FLORIDA UNDER ARTICLE V, SECT. 3(b)(3) ARE 'CUT-OFF' BY CLERK PER MANUAL IIA.1a, PROMULGATED UNDER JENKINS v STATE, 385 So.2d 1356, MANDATING AUTOMATIC DISMISSAL BY CLERK, WITHOUT HEARING SOLELY BASED ON THE FACT THAT COURT OF APPEAL OF FIRST INSTANCE RENDERED A PER CURIAM AFFIRMED DECISION WITHOUT AN OPINION .

The oxymoronic and unconstitutional procedure of Supreme Court Manual II A.1.(a) promulgated under unconstitutional Jenkins, is

patently lacking in fundamental Equal Protection under 14th and 1st Amendments. Federal and dictionary definitions cannot equate an AUTOMATIC dismissal with DISCRETIONARY action.

"When an appeal is afforded (Art.V 3(b)(3)which in Florida provides for review of provisions of federal constitution) however, it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause. Griffin v. Illinois" Cf. Lindsey v. Normet 405 US at 77.

Dept. Legal Affairs v. 5th DCA, 434 So.2d 310:

" rationale and basis for decision without opinion is always subject to speculation... such citation has no relevance for any purpose.

Surely such equivocation by Supreme Court of Florida requires This Court's power of supervision. Strict scrutiny analysis and rationale should be applied because 11th Circuit by its affirmance, without opinion, held that Supreme Court of Florida did not deprive Zermans under Jenkins of Zermans' fundamental constitutional rights under 1st, 10th and 14th Amend. despite Florida Const. Art.V 3(b)(3) provides:

"May review any decision of DCA that expressly (note-federal law includes implicitly) construes a provision of the state or federal constitution.

Below is Rule 2.030 which Manual violates.

Rule 2.030. THE SUPREME COURT

(a) Internal Government.

(1) *Exercise of Powers and Jurisdiction.*

The supreme court shall exercise its powers and jurisdiction en banc. Five justices shall constitute a quorum and the concurrence of four shall be necessary to a decision. In cases requiring only a panel of five, if four of the five justices who consider the case do not concur, it shall be submitted to the other two justices.

CONCLUSION - For the reasons outlined above, Petitioners, pro se, respectfully request this Court grant their Petition for Writ of Certiorari.

Ernest R. Zerman, pro Se
2049 Ocean Dr. #1403
Avant Garde Condominium
Hallandale, Fl 33009
(305)456-1404

Certificate of Service: I, Ernest R.Zerman hereby Certifies that a copy of Petition above has been furnished by U.S. Mail to Chief Justice Leander Shaw and Joseph Lewis, Jr., Esq.,Supreme Court Building, Tallahassee, Fl 32301 and Allan Rubin,Esq.,2404 Hollywood Blvd, Hollywood Fl 33020 on October 6, 1990.

Ernest R. Zerman pro se
2049 Ocean Dr. #1403
Hallandale, Fl 33009

APPENDIX -A

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 89-5706
Non-Argument Calendar

D. C. Docket No. 89-972-CIV-JLK

ERNEST R. ZERMAN and
EVELYN ZERMAN,

Plaintiffs-Appellants,

versus

SUPREME COURT OF FLORIDA,
et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

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(May 23, 1990)

Before TJOFLAT, Chief Judge, JOHNSON and HATCHETT, Circuit Judges.

PER CURIAM:

AFFIRMED. See Circuit Rule 36-1

APPENDIX - B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ERNEST R. ZERMAN and EVELYN ZERMAN, Plaintiffs,	No.89-972-CIV-KING
v.	
SUPREME COURT OF FLORIDA, et al., Defendants	

ORDER DISMISSING COMPLAINT

This cause comes before the court upon sua sponte examination of the record. The court has reviewed the plaintiffs' complaint and has failed to discern a cognizable federal cause of action, Accordingly, it is

ORDERS and ADJUDGED that the plaintiffs' complaint be, and the same is hereby DISMISSED.

DONE and ORDERED in chambers at the United States District Courthouse, Federal Courthouse Square, Miami, Florida, this 21st day of June 1989.

JAMES LAWRENCE KING
JAMES LAWRENCE KING
CHIEF U. S. DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

cc: Ernest R. Zerman, pro se

APPENDIX - C

SUPREME COURT OF FLORIDA

THURSDAY, MARCH 10,1988

ERNEST ZERMAN, et al.,	*	CASE NO. 72,053
Appellants,	*	District Court
v.	*	of Appeal, 4th District
KENNETH WOLOFSKY, et al.,	*	No. 4-86-2206
Appellees.	*	

It appearing to the Court that the District Court of Appeal, Fourth District, did not declare invalid a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction this appeal is hereby dismissed ....

A true Copy
(Seal)
Supreme Court of
State of Florida
Sid J. White
Clerk of Supreme Court

cc: Hon. Clyde L. Heath
Clerk
Hon. Robert Andrews
Judge
Hon. Robert E.
Lockwood, Clerk
Ms. Evelyn Zerman
Mr. Ernest Zerman
Allan M. Rubin, Esq.

APPENDIX - D

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT

ERNEST ZERMAN and EVELYN ZERMAN, Appellants, v. KENNETH WOLOFSKY, PETER WOLOFSKY, SIDNEY WOLOFSKY, et al. Appellees.	CASE NO. 4-86-2206.

Decision filed November 18, 1987

Appeal from the Circuit Court for Broward County: Robert Andrews, Judge.

Ernest R. Zerman and Evelyn Zerman, Hallandale, pro se appellants

Allan M. Rubin of Allan Rubin, P.A., Hollywood, for appellees

PER CURIAM

AFFIRMED

HERSEY, C.J., DELL and STONE, JJ., concur.

EXHIBIT - E

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

KENNETH WOLOFSKY, PETER WOLOFSKY, SIDNEY WOLOFSKY, MEL SCHUSTER and ELROD CORP., Plaintiffs, v. ERNEST R. ZERMAN and EVELYN ZERMAN, Defendants.	Case No. 81-21402 (CH) FINAL JUDGMENT OF FORE-CLOSURE

ORDERED AND ADJUDGED as follows:

1. That Plaintiffs, KENNETH WOLOFSKY, PETER WOLOFSKY, SIDNEY WOLOFSKY, MEL SCHUSTER, and ELROD CORP., are due Two Thousand Two Hundred Twenty-Nine and 98/100 $2229.98 Dollars, pursuant to their Claim of Lien and pursuant to the provisions of that Pledge Agreement attached as exhibit to the pleadings filed herein, together with interest of $817.64, $15,000.00 representing reasonable attorney fees, $500.00 expert witness fee, .. all pursuant to the claim of lien and Pledge Agreement sued on in this action, ...total sum of $18,860.12...bear interest at 12%.

Done and ORDERED in chambers at Fort Lauderdale, Florida, this 19th day of August, 1986.

Robert Lance Andrews
Circuit Court Judge